

**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

|                               |   |   |
|-------------------------------|---|---|
| <b>In the Matter of:</b>      | : | <b>U.S. EPA Docket No.</b>                  |
|                               | : | <b>TSCA-03-2007-0044</b>                    |
| <b>Clean Harbors PPM, LLC</b> | : |   |
| <b>4105 Whittaker Avenue</b>  | : |   |
| <b>Philadelphia, PA 19124</b> | : | <b>Proceeding under Sections 15 and 16</b>  |
|                               | : | <b>of the Toxic Substances Control Act,</b> |
| <b>Respondent.</b>            | : | <b>15 U.S.C. §§ 2614 and 2615</b>           |

**CONSENT AGREEMENT**

**I. PRELIMINARY STATEMENT**

1. This Consent Agreement is entered into by the Director of the Waste and Chemicals Management Division, U. S. Environmental Protection Agency, Region III ("Complainant") and Clean Harbors PPM, LLC (or "Respondent") pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Sections 15 and 16 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2614 and 2615, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3)). This Consent Agreement and the accompanying Final Order (collectively referred to herein as the "CAFO") resolve violations of TSCA and of the regulations implementing TSCA Section 6(e), 15 U.S.C. § 2605(e), as set forth in 40 C.F.R. Part 761, entitled "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions" (hereinafter, the "PCB regulations").
2. The violations cited herein pertain to the Respondent's alleged failure to comply with PCB regulations promulgated pursuant to TSCA Section 6(e), 15 U.S.C. § 2605(e), governing the prohibition of, and/or the requirements for, the manufacture, processing, distribution in commerce, use, disposal, storage and marking of polychlorinated biphenyls ("PCBs") and PCB Items at the Respondent's facility located at 4105 Whittaker Avenue, Philadelphia, PA 19124.

**II. GENERAL PROVISIONS**

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this CAFO.

4. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in Section III ("Findings of Fact and Conclusions of Law") of this CAFO.
5. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
6. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
7. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
8. Each Party shall bear its own costs and attorney's fees.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

9. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the findings of fact and conclusions of law set forth immediately below.
10. The Respondent, Clean Harbors PPM, LLC is a Delaware limited liability corporation registered to do business in the Commonwealth of Pennsylvania.
11. Respondent is a "person" as defined in 40 C.F.R. § 761.3.
12. Respondent is, and at all times relevant to this Consent Agreement was, a "commercial storer of PCB waste" as that term is defined at 40 C.F.R. § 761.3, and an owner and operator of a PCB waste storage and transfer facility located at 4105 Whittaker Avenue, Philadelphia, PA 19124 (the "Facility").
13. On or about May 23, 2006, during normal business hours, duly authorized representatives (the "EPA Inspectors") of the United States Environmental Protection Agency ("EPA" or the "Agency") conducted a compliance evaluation inspection at the Facility (the "Facility Inspection") pursuant to the authority of Section 11 of TSCA, 15 U.S.C. § 2610. The purpose of the Facility Inspection was to evaluate the Respondent's compliance with regulations promulgated pursuant to TSCA Section 6(e), 15 U.S.C. § 2605(e), governing the prohibition of, and/or the requirements for, the manufacture, processing, distribution in commerce, use, disposal, storage and marking of polychlorinated biphenyls ("PCBs") and PCB Items.

14. TSCA Section 15, 15 U.S.C. § 2614, provides, *inter alia*, that it shall be unlawful for any person to fail or refuse to comply with any rule promulgated under TSCA Section 6, 15 U.S.C. § 2605.
15. On the basis of the observations made, records reviewed and additional information collected and obtained by the EPA Inspectors during the course of the Facility Inspection, Complainant has determined that Respondent has violated TSCA Sections 6(e) and 15, 15 U.S.C. §§ 2605(e) and 2614.

**COUNT I**

**(Failure to Comply with PCB Item Marking Requirements)**

16. The allegations of paragraphs 1 through 15 of this Consent Agreement are incorporated herein by reference.
17. 40 C.F.R. § 761.40(a)(1) requires that PCB Containers in existence on or after July 1, 1978 be marked with the M<sub>L</sub> mark illustrated in Figure 1 of 40 C.F.R. § 761.45(a).
18. 40 C.F.R. § 761.40(h) further requires, in relevant part, that all marks required by 40 C.F.R. Part 761, Subpart C, must be able to be "easily read by any persons inspecting or servicing the marked PCB Items. . ."
19. At the time of the Facility Inspection, Respondent was storing PCB Containers in a Facility Warehouse (hereinafter, "PCB Container storage area").
20. At the time of the Facility Inspection several PCB Containers in storage for disposal in the PCB Container storage area were not labeled with the M<sub>L</sub> mark illustrated in Figure 1 of 40 C.F.R. § 761.45(a) and another such PCB Container was marked with a damaged label that was not easily readable.
21. Respondent violated TSCA Section 15, 42 U.S.C. Section 2614, and the PCB Item marking requirements of 40 C.F.R. §§ 761.40(a)(1) and 761.40(h), respectively, by failing to label all PCB Containers in storage for disposal at the Facility with the required M<sub>L</sub> mark illustrated in Figure 1 of 40 C.F.R. § 761.45(a) and by failing to ensure that all such PCB Containers were labeled so that the required mark could be easily read by any person inspecting or servicing such marked PCB Items.

**COUNT II**

**(Failure to Comply with PCB Storage for Disposal Storage Unit Requirements)**

22. The allegations of paragraphs 1 through 21 of this Consent Agreement are incorporated herein by reference.
23. The requirements of 40 C.F.R. § 761.65 apply to the storage for disposal of PCB Items with PCB concentrations of 50 parts per million or greater.
24. At the time of the Facility Inspection, the Facility's PCB Container storage area was used to store for disposal, among other things, PCB Items at concentrations of 50 parts per million or greater, thereby subjecting Respondent to each of the 40 C.F.R. § 761.65 storage for disposal requirements.
25. 40 C.F.R. § 761.65(b)(1)(iii) requires, in relevant part and with exceptions not herein applicable, that "after July 1, 1978, owners or operators of any facilities used for the storage of . . . PCB Items designated for disposal shall comply with . . . storage unit requirements" including a requirement that the flooring and curbing of such storage units must contain "[n]o . . . openings that would permit liquids to flow from the curbed area."
26. At the time of the Facility Inspection, there was a crack in the continuous curbing of the Facility's PCB Container storage area that was large enough to permit liquids to flow from this curbed area.
27. Respondent violated TSCA Section 15, 42 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.65(b)(1)(iii), by failing to ensure that the flooring and curbing of the Facility's PCB Container storage area contained no openings that would permit liquids to flow from the curbed area.

**COUNT III**

**(Failure to Comply with PCB Storage for Disposal Management Requirements)**

28. The allegations of paragraphs 1 through 27 of this Consent Agreement are incorporated herein by reference.
29. 40 C.F.R. § 761.65(c)(8) requires, in relevant part, that "PCB Items [at concentrations of 50 parts per million or greater] shall be dated on the item when they are removed from service for disposal" and that PCB storage "shall be managed so that the PCB Items can be located by this date."

30. During the course of the Facility Inspection, PCB Items, including PCB Items at concentrations of 50 parts per million or greater (hereinafter referred to as a "50 parts per million or greater PCB Item[s]"), were being stored for disposal at the Facility's PCB Container storage area in rows, but not any in chronological order by the date that these PCB Items were removed from service.
31. At the time of the Facility Inspection, the Respondent maintained Facility records that documented and recorded information about the PCB Items stored in the Facility PCB Container storage area, including the out-of-service date of each such PCB Item. However, such records only identified the storage location (designated by an abbreviation for the Facility PCB Container storage area building and the row number therein) of *some, but not all*, of the 50 parts per million or greater PCB Items then in storage at the Facility.
32. At the time of the Facility Inspection, neither the manner of PCB Item storage in the Facility PCB Container storage area, nor the information contained in Facility records maintained by the Respondent, was sufficient to locate *each* 50 parts per million or greater PCB Item in storage for disposal at the Facility by the date that it was removed from service.
33. Respondent violated TSCA Section 15, 42 U.S.C. Section 2614, and the requirements of 40 C.F.R. § 761.65(c)(8), by failing to manage each 50 parts per million or greater PCB Item in storage for disposal at the Facility so that it could be located by the date that it was removed from service.

#### **COUNT IV**

**(Failure to Comply with PCB Records and Monitoring Requirements)**

34. The allegations of paragraphs 1 through 33 of this Consent Agreement are incorporated herein by reference.
35. 40 C.F.R. § 761.208(c)(3) provides that "[w]hen an off-site shipment of PCB waste is initiated from a commercial storage or disposal facility, the owner or operator of the commercial storage or disposal facility shall comply with the manifest requirements that apply to generators of PCB waste."
36. The manifest requirements that apply to generators of PCB waste, at 40 C.F.R. § 761.208(a)(4), require, in relevant part, that "[w]hen a generator has employed and independent transporter to transport the PCB waste to a commercial storer or disposer, the generator shall confirm by telephone, or by other means of confirmation agreed to by both parties, that the commercial storer or disposer actually received the manifested waste."

The generator shall confirm receipt of the waste by the close of business the day after he receives the manifest hand-signed by the commercial storer or disposer. . .” The generator shall retain a written record of all telephone or other confirmations to be included in the annual document log, in accord with [40 C.F.R.] § 761.180.”

37. 40 C.F.R. § 761.180(a)(2)(viii) contains the written annual document log requirements that apply to generators of PCB waste and to commercial storage or disposal facilities that initiate off-site shipments of PCB waste and provides that such written annual document logs shall include “[a] record of each telephone call or written means of verification agreed upon by both parties, made to each designated commercial storer or designated disposer to confirm receipt of PCB waste transported by an independent transporter, as required by [40 C.F.R.] § 761.208.”
38. During calendar years 2003 and 2004, the Respondent employed and utilized an independent transporter to transport PCB waste contained in PCB Containers from the Facility to other commercial storage and/or disposal facilities.
39. At the time of the Facility Inspection, the Facility’s annual records and the Facility’s written annual document logs (including the Facility logs used to document off-site PCB disposal shipments and certifications) for the calendar years 2003 and 2004 did not include records of any telephone calls or other written means of verification between Respondent and any commercial storers or disposers to confirm the receipt of PCB waste transported from the Facility by independent transporters.
40. Respondent violated TSCA Section 15, 42 U.S.C. § 2614, and the requirements of 40 C.F.R. § 761.180(a)(2)(viii), by failing to maintain as part of the Facility’s written annual document logs for the calendar years 2003 and 2004 records of telephone calls or other written means of verification between Respondent and designated commercial storers and/or disposers to confirm the receipt of PCB waste transported from the Facility by independent transporters.

#### **IV. CIVIL PENALTY**

41. In settlement of EPA’s claims for civil monetary penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of Twenty-Two Thousand Seven Hundred Dollars (\$22,700.00), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent’s receipt of a true and correct copy of this CAFO. In order to avoid the assessment of interest in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this

CAFO is mailed or hand-delivered to Respondent.

42. The aforesaid settlement amount is consistent with the provisions and objectives of TSCA and 40 C.F.R. Part 761. Complainant has determined the appropriate penalty for the violations identified and described in this Consent Agreement upon consideration of a number of factors, including the penalty criteria set forth in Section 16 of TSCA, *i.e.*, the nature, circumstances, extent, and gravity of the violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, degree of culpability, and such other factors as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Polychlorinated Biphenyls Penalty Policy* (April 9, 1990) to calculate the civil penalty amount assessed in the preceding paragraph of this Consent Agreement.
43. Payment of the civil penalty amount required under the terms of paragraph 41, above, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:
- a. All payments by Respondent shall reference its name and address and the Docket Number of this action (TSCA-03-2007-0044).
  - b. All checks shall be made payable to the "United States Treasury".
  - c. All payments made by check and sent by regular U.S. Postal mail shall be addressed and mailed to:  
  
U.S. EPA, Region III  
P.O. Box 371099M  
Pittsburgh, PA 15251-6515.
  - d. All payments made by check and sent by overnight delivery service shall be addressed and sent to:  
  
Mellon Client Service Center  
Attn: Shift Supervisor  
Lockbox 371099M; Account 9109125  
500 Ross Street  
Pittsburgh, PA 15262-0001.

- e. All electronic wire transfer payments shall be directed to:

Mellon Bank  
Account No. 9109125  
ABA 043000261  
22 Morrow Drive  
Pittsburgh, PA 15235

SWIFT Address MELNUS3P - (SWIFT Address is only needed on international transfers).

- f. The Customer Service contact and phone number for above payment centers are:

Patricia McKaveney  
(412) 234-5805.

- g. At the same time that any payment is made, Respondent shall mail copies of any corresponding check, or written notification confirming any electronic wire transfer, to:

Ms. Lydia Guy  
Regional Hearing Clerk (3RC00)  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

and to

Mr. A.J. D'Angelo  
Senior Assistant Regional Counsel  
Office of Regional Counsel (3RC30)  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029.

44. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this Consent Agreement and Final Order shall result in the assessment of



- late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
45. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. §13.11(a).
46. The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. §13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
47. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. §13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
48. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this Consent Agreement and the accompanying Final Order.

#### **V. EFFECT OF SETTLEMENT**

49. Payment of the penalty specified in paragraph 41, above, in the manner set forth in paragraph 43, above, shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under TSCA for the specific violations alleged in Section III ("Findings of Fact and Conclusions of Law"), above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

#### **VI. OTHER APPLICABLE LAWS**

50. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

## **VII. CERTIFICATION OF COMPLIANCE**

51. Respondent certifies to Complainant, upon investigation, to the best of its knowledge and belief, that Respondent, in its capacity as the owner and operator of the Facility, presently is complying with the provisions of TSCA, and the regulations promulgated thereunder, that are referenced in this Consent Agreement.

## **VIII. RESERVATION OF RIGHTS**

52. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil monetary penalties for the specific violations alleged in Section III ("Findings of Fact and Conclusions of Law") herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under TSCA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the EPA Regional Hearing Clerk.

## **IX. PARTIES BOUND**

53. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and its officers, directors, employees, successors, agents and assigns.

## **X. EFFECTIVE DATE**

54. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer, is filed with the EPA Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

## **XI. ENTIRE AGREEMENT**

55. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

***In the Matter of:  
Clean Harbors PPM, LLC***

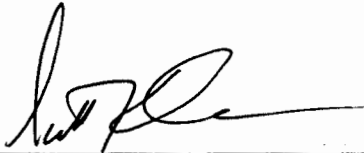
***Consent Agreement  
Docket No. TSCA-03-2007-0044***

**XII. EXECUTION**

56. The person signing this Consent Agreement on behalf of the Respondent acknowledges and certifies by his/her signature that he/she is fully authorized to enter into this Consent Agreement and to legally bind Clean Harbors PPM, LLC to the terms and conditions of this Consent Agreement and the accompanying Final Order.

**For Clean Harbors PPM, LLC:**

Date: 12/15/06


By:   
\_\_\_\_\_  
Scott Kuhn  
Vice President of Environmental Compliance

**In the Matter of:**  
**Clean Harbors PPM, LLC**

**Consent Agreement**  
**Docket No. TSCA-03-2007-0044**

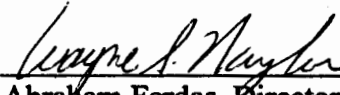
**For Complainant:**

Date: 12/18/2006

By:   
A.J. D'Angelo  
Senior Assistant Regional Counsel

Accordingly, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 12/19/06

By:   
*for* Abraham Ferdas, Director  
Waste and Chemicals Management Division

**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

|                               |   |   |
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| <b>In the Matter of:</b>      | : | <b>U.S. EPA Docket No.</b>                  |
|                               | : | <b>TSCA-03-2007-0044</b>                    |
| <b>Clean Harbors PPM, LLC</b> | : |   |
| <b>4105 Whittaker Avenue</b>  | : |   |
| <b>Philadelphia, PA 19124</b> | : | <b>Proceeding under Sections 15 and 16</b>  |
|                               | : | <b>of the Toxic Substances Control Act,</b> |
| <b>Respondent.</b>            | : | <b>15 U.S.C. §§ 2614 and 2615</b>           |

**FINAL ORDER**

The Director of the Waste and Chemicals Management Division, U. S. Environmental Protection Agency, Region III ("Complainant") and Clean Harbors PPM, LLC ("Respondent") have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* ("Consolidated Rules of accordance Practice"), 40 C.F.R. Part 22, with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

**NOW, THEREFORE**, pursuant to Sections 15 and 16 of TSCA, 15 U.S.C. §§ 2614 and 2615, and the Consolidated Rules of Practice, after having determined, based on the representations of the parties to the attached Consent Agreement, that the civil penalty of Twenty-Two Thousand Seven Hundred Dollars (\$22,700.00) agreed to therein was based upon a consideration of the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), **IT IS HEREBY ORDERED** that Respondent pay a civil monetary penalty of Twenty-Two Thousand Seven Hundred Dollars (\$22,700.00) and comply with the terms and conditions of the foregoing Consent Agreement.

***In the Matter of:  
Clean Harbors PPM, LLC***

***Final Order  
Docket No. TSCA-03-2007-0044***

The effective date of the foregoing Consent Agreement, and of this Final Order, is the date on which this Final Order is filed with the EPA Regional Hearing Clerk.

Date: 12/20/06

*Renée Sarajian*  
Renée Sarajian  
Regional Judicial Officer  
U.S. EPA - Region III

A.J. D'Angelo (3RC30)  
Sr. Assistant Regional Counsel  
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